Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms	)	CC Docket No. 98-171
	)	
Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990	)	CC Docket No. 90-571
	)	
Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size	)	CC Docket No. 92-237 NSD File No. L-00-72
	)	
Number Resource Optimization	)	CC Docket No. 99-200
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	
Truth-in-Billing Format	)	CC Docket No. 98-170

Comments of TracFone Wireless, Inc.

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SUMMARY

TracFone Wireless, Inc. strongly supports the goal of providing universal service to all Americans. TracFone's prepaid wireless service offers the advantages of CMRS to consumers who often find more traditional CMRS offerings either inadequate or unavailable because they cannot meet credit requirements or security deposit demands, r because they are unwilling or unable to enter into long-term service contracts required by many traditional CMRS providers or because they cannot meet the minimum monthly charges to obtaining even the lowest levels of service offered by traditional CMRS providers. Thus, TracFone serves low-income and low-volume users whose needs are not being met by other CMRS providers. In addition to providing service to the underserved, TracFone is willing to contribute to the various universal service support funds. TracFone, however, opposes basing those contributions on a flat monthly connection fee. TracFone believes that a connection-based universal service charge is contrary to the equity and nondiscrimination requirements of Section 254 of the Communications Act. In particular, a connection-based universal service assessment would harm both low-income and low-volume consumers. Because of the disproportionate impact on low-income and low-volume users, there would be a similarly disproportionate impact on those carriers that market to these consumers. Competition in the CMRS marketplace would be impeded by the adoption of a connection-based charge since a connection-based charge would economically disadvantage those CMRS carriers offering prepaid services.

TracFone recognizes that recent developments in the telecommunications marketplace may warrant certain changes to the current universal service funding mechanism. However, TracFone believes that the Commission has already taken some important steps to address those changing conditions. TracFone urges the Commission to allow for a sufficient period to assess

whether those recently-initiated changes are adequate to address the current telecommunications market rather than developing a radically different connection-based charge that may satisfy the concerns of some carriers, but may also have unintended adverse consequences for other carriers and which may impede the development of competition in the provision of wireless services.

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COMMENTS OF TRACFONE WIRELESS, INC.

TracFone Wireless, Inc. (TracFone), by counsel, hereby submits its comments in response to the Further Notice of Proposed Rulemaking released on February 26, 2002, regarding the above-captioned proceeding.[1]

I. INTRODUCTION

TracFone offers a unique approach to providing commercial mobile radio services (CMRS) to market segments that have not been adequately served by other CMRS carriers. TracFone supports and promotes the goal of universal service in its service offerings and is willing to contribute its fair share to the Universal Service Fund (USF). TracFone believes that it is important for the Commission to have a complete picture of its service offerings and its business strategy in order to understand the reasons why TracFone opposes a connection-based charge for purposes of contributing to the USF as described in the *Further Notice*. Based on TracFone's business experience, a $1.00 per month connection charge for activated wireless mobile handsets would harm consumers, particularly low-income and low-volume wireless users who are intended to benefit from the universal service goals codified in the Communications Act and embodied in the Commission's rules and policies, and would impede full and fair competition in the CMRS marketplace.

TracFone provides prepaid CMRS telecommunications service by reselling services offered by more than 40 licensed cellular network operators. TracFone offers national coverage through arrangements with large and small CMRS carriers across the country. TracFone is the

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[1] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, (*Further Notice of Proposed Rulemaking and Report and Order*), FCC 02-43, released Feb. 26, 2002 (*Further Notice*).

only prepaid wireless service that can provide a local wireless telephone number in nearly every city in the United States, including Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands. TracFone currently offers new and refurbished handsets that use either TDMA or CDMA digital technology. With the purchase of TracFone digital service, customers also receive such enhanced features as voice mail, caller ID, and call waiting.

TracFone (formerly Topp Telecom, Inc.) currently provides service to over 1.8 million customers. TracFone is a corporate affiliate of America Movíl, S.A. de C.V. – the largest provider of cellular service in Latin America with more than 26 million subscribers in ten countries. Currently, TracFone employs approximately 500 people in its corporate headquarters in Miami, Florida.

TracFone's service allows consumers to purchase airtime minutes before they use them rather than the traditional approach of paying for minutes on a monthly basis. TracFone offers an off-the-shelf, pay-as-you-go, prepaid wireless service with no contracts, credit checks, monthly fees, activation fees, security deposits, or age limits. Thus, TracFone provides its customers with mobile telephones, services and pricing plans that meet the needs of a variety of consumers for whom existing "traditional" CMRS offerings are inadequate, unavailable, or otherwise inappropriate. These consumers include low-volume users, including people who purchase CMRS phones primarily for safety or security purposes, people who for a variety of reasons want to avoid long-term service commitments of one year or more that contain substantial early termination penalties, consumers who want to control their costs by paying for specified quantities of service in advance, as well as low-income users and young people who cannot meet the credit requirements or security deposit demands of other CMRS carriers. Prepaid wireless service is becoming an important part of CMRS service in the United States and TracFone is an industry leader in that important and growing market segment.

TracFone handsets may be purchased directly from TracFone or at any one of over 30,000 retail stores nationwide, including such national chain stores as Wal-Mart, K-Mart, Best Buy, CompUSA, JC Penney, and Target. Like traditional CMRS providers, TracFone subsidizes the cost borne by consumers to acquire the handsets. Unlike traditional CMRS providers, TracFone does not subject its customers to service commitment periods of one year or more in order to ensure that the handset subsidy amounts will be recovered. TracFone airtime may be purchased at over 60,000 locations. For the purchase price, the customer receives a digital handset referred to as a "TracFone" and 20 minutes of calling time. The customer must call TracFone's customer service center or use TracFone's website to have the phone activated and to be assigned a local telephone number. Additional airtime can be acquired through the purchase of prepaid wireless airtime cards, which are also sold in retail stores where TracFone handsets are sold. Currently, these prepaid wireless airtime cards are sold in increments of 30, 60, 150, and 300 units at manufacturer's suggested retail prices of $17.99, $24.99, $49.99, and $79.99, respectively, each with 60 days of access.[2] A unit equals one minute of local or long distance calling from the customer's home calling area.[3] If the customer is roaming outside of the home calling area, it takes two units to equal one minute of calling time. Each card also has an expiration date, based on when it was activated. The TracFone handset displays a customer's actual airtime balance and expiration date on the handset's screen. TracFone is constantly working with vendors to de-

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[2] TracFone also offers a one-year prepaid wireless service card for $94.99, which comes with 150 airtime minutes or less than $8.00 per month.

[3] TracFone chooses the underlying CMRS carrier based on the customer's home calling area.

velop new service plans that meet the needs of consumers and allow TracFone to compete in the CMRS marketplace.

II. A CONNECTION-BASED USF ASSESSMENT WOULD VIOLATE THE REQUIREMENT OF THE COMMUNICATIONS ACT THAT UNIVERSAL SERVICE FUNDING MECHANISMS BE EQUITABLE AND NONDISCRIMINATORY

Section 254(d) of the Communications Act requires that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service."[4] The *Further Notice* seeks comment on whether a connection-based assessment methodology would meet the Section 254(d) requirement that contribution methods must be equitable and nondiscriminatory.[5] TracFone fully supports the goals of Section 254 of the Communications Act to preserve and advance universal service. Indeed, TracFone is willing to contribute its fair share to the various funds established by the Commission to support universal service, as required by Section 254(d) of the Communications Act. Imposition of the proposed connection-based charge, however, would violate the statutory requirements of Section 254(d) of the Communications Act because a connection-based contribution charge would be neither equitable nor nondiscriminatory.

A connection-based charge would be neither equitable nor nondiscriminatory, especially as it affects prepaid CMRS carriers like TracFone as well as those customers who utilize such carriers' services. First, a connection-based charge would discriminate against and would pose economic hardship on TracFone's low-income customers. As a prepaid wireless carrier,

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[4] 47 U.S.C. § 254(d).

[5] *Further Notice*, at para. 67.

TracFone appeals to many low-income customers who are unable to pass a credit check or to afford security deposits required by other CMRS carriers, as well as many wireline carriers. Approximately 11 percent of TracFone's customers have annual incomes of less than $15,000 and approximately 16 percent of TracFone's customers have incomes under $25,000.[6] TracFone estimates that its USF contributions would increase from approximately $0.17 per activated handset to $1.00 per handset per month under the connection-based charge proposal. This increase of 488 percent would necessitate that TracFone increase its usage charges on prepaid wireless airtime cards because TracFone does not issue monthly bills to its customers that can be used to pass through these USF contributions on a "line item" basis as do traditional CMRS providers and wireline local telephone service providers. This imposition of additional costs on low-income consumers to whom CMRS service is otherwise unavailable or unaffordable, which would directly result from the connection-based charge, would be contrary to the letter and the spirit of Section 254(d). In such circumstances, imposition of a connection charge which would be disproportionately recovered from low-income consumers could hardly be found to meet the Section 254(d) requirement that universal service funding mechanisms be equitable.

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[6] For 2001, the U.S. Census Bureau considers the poverty threshold for a family of four (with two children) to be $17,960. *See* <<http://www.census.gov/hhes/poverty/threshld/thresh01.html>>. A standard measurement of low-income status is 150 percent of the poverty level. *See Public Notice, Federal-State Joint Board on Universal Service Seeks Comment on Review of Lifeline and Link-Up Service For All Low-Income Consumers*, CC Docket No. 96-45, FCC 01J-2, at 3 n.16, released Oct. 12, 2001. Thus, a family of four with an income of $26,940 would be considered low-income. TracFone does not have enough information to determine the percentage of its customers that would meet this low-income test, but it believes a substantial number of its customers have incomes below that level and would be considered low income.

Second, a connection-based charge would place greater burdens on those carriers whose services are designed for use by low-volume users. Such a charge would discriminate against those carriers and against their low-volume users who would be assessed a higher fee per interstate minute of use than higher-volume users. Carriers that serve a large proportion of low-volume customers would be subject to universal service contribution levels that are disproportionate to their provision of interstate telecommunications. TracFone's prepaid wireless service is beneficial for low-volume consumers or people who want to limit their use, because customers are limited in call volume by the amount they have prepaid. For example, approximately 75 percent of TracFone customers redeem 30 units or less a month and 47 percent of customers redeem no units in an average month.[7] Applying the Commission's safe harbor assumption for cellular service, 75 percent of TracFone customers have less than 5 minutes of interstate calling per month. A connection-based charge, however, would require TracFone to make the same per-customer contributions to USF as other mobile telephone providers with an average subscriber using 255 or more minutes per month.[8] Further, as noted above, TracFone makes wireless handsets affordable to low income and low volume consumers by subsidizing the price for the handsets. Imposition of a $1.00 per month connection charge as proposed in the Notice would make it even more difficult for TracFone to recover its costs of making the handsets available since it would either have to increase the usage charges to consumers or bear the additional monthly

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[7] *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services,* (*Sixth Report*), FCC 01-192, at 22, released July 17, 2001.

[8] *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services,* (*Sixth Report*), FCC 01-192, at 22, released July 17, 2001.

charge itself. Under these circumstances, a connection-based charge would violate the "equitable" standard codified at Section 254(d) since it would impair TracFone's and other prepaid providers' opportunity and ability to serve this market segment.

Finally, those interstate carriers that do not provide their own connections to the public switched network would be relieved of any obligation to contribute to universal service, irrespective of how much revenue those carriers derive from provision of interstate service. The *Further Notice* candidly acknowledges that those carriers providing only prepaid calling card services or marketing dial-around services would not be required to contribute to universal service at all under the proposed methodology.[9] At the same time, carriers whose customers make few or no interstate calls would be required to pay a contribution to USF on a per-line basis for such customers only because they provide those customers a connection to the public switched network. A system which imposes on carriers – and ultimately on their customers – an obligation to contribute $1.00 per month to the federal universal service fund irrespective of whether the carrier provides *any* interstate service to those customers and irrespective of whether the customers make *any* interstate calls hardly can be said to be either equitable or nondiscriminatory. This situation would be similar to the requirement struck down by the U.S. Court of Appeals for the Fifth Circuit in *Texas Office of Public Utility Counsel v. FCC*.[10] In that case the court found that the Commission had acted arbitrarily and capriciously by failing to demonstrate

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[9] *Further Notice*, at para. 68. The reference to prepaid calling card services apparently does not include those carriers which sell prepaid cards for use with wireless services which do include a connection provided by the wireless provider to the public switched network. Dial around services refers to long distance services accessed by customers dialing carrier access codes rather than being connected directly to the public switched network.

[10] 183 F.2d 393, 434-35 (5th Cir. 1999).

how requiring certain carriers to contribute more in universal service payments than those carriers derive in interstate revenues satisfies the equitable and nondiscriminatory requirement of Section 254(d).

TracFone agrees with the Commission that the current USF contribution methodology may have a disadvantageous impact on certain carriers with declining interstate revenues. The proposal to move to a connection-based charge, however, seems to be based on providing relief to certain of those large carriers, as well as on achieving administrative simplicity and convenience, rather than advancing the statutory objectives of ensuring equity and nondiscrimination for all carriers and all consumers. TracFone urges the Commission not to make the concerns of several large carriers who have experienced recent revenue and market share reductions and administrative convenience the driving forces behind USF reform, especially where the resulting methodology would violate the requirements of Section 254(d) of the Communications Act, by disproportionately increasing the USF contributions of carriers who offer services to low-volume and low-income consumers who are intended to benefit from the goals of universal service.

Instead, the Commission should proceed cautiously in its efforts to reform the manner in which USF contributions are collected from carriers. The Commission must remain mindful of the goals of the Communications Act and fashion its rules carefully to avoid the unintended consequences of penalizing smaller CMRS carriers, impeding competition, and increasing prices to consumers, simply because the Commission is focused on balancing the competing interests of several large interexchange carriers and incumbent local exchange carriers.

III. A CONNECTION CHARGE WOULD HARM CONSUMERS

One of the statutory principles guiding policies for the preservation and advancement of universal service is that "[q]uality services should be available at just, reasonable, and affordable rates."[11] A key component of universal service is ensuring that low-income consumers have access to telecommunications and information services.[12] TracFone's services, in particular, meet these goals by providing low-income customers with the latest wireless services that they could not otherwise obtain from traditional CMRS carriers who require credit checks or security deposits and who typically require customers to sign service contracts with long-term commitments and costly early termination fees. By increasing costs to carriers like TracFone, the Commission would increase costs of service to the very low-income consumers who are intended to benefit from the Commission's universal service policies. This result would disserve the public interest.

The *Further Notice* assumes that many low-income users will be able to avoid USF contributions because a connection charge would not be assessed on Lifeline customers.[13] This assumption, however, would not apply to providers like TracFone or to their customers. TracFone's low-income customers cannot receive Lifeline support for their purchase of TracFone services because, as a non-facilities-based reseller, TracFone is not entitled to "eligible telecommunications carrier" status.[14] Because TracFone's low-income customers are not currently eligible to receive Lifeline support in connection with their use of TracFone service, those

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[11] 47 U.S.C. § 254(b)(1).

[12] 47 U.S.C. § 254(b)(3).

[13] *Further Notice*, at para. 49.

[14] Section 214(e)(1) of the Communications Act requires that an eligible telecommunications carrier must offer services "either using its own facilities or a combination of its own facilities and resale of another carrier's services." In interpreting this section of the Communications Act, the Commission has clarified that a telecommunications carrier that offers the services supported by federal universal service support mechanisms exclusively through the resale of another carrier's services may not be designated an eligible telecommunications carrier. Section 54.201(i) of the Commission's Rules, 47 C.F.R. § 54.201(i).

customers would not have the benefit of avoiding USF contribution charges if the Commission were to adopt its proposal to exempt only Lifeline customers from the contribution base. Instead, TracFone's low-income customers would face a "double whammy" – they would not be eligible to receive Lifeline support, and they would be obligated to contribute to USF at a regressive flat rate through the proposed connection charge. Thus, a TracFone customer would not have the opportunity to lower his or her USF contributions by reducing usage of interstate service. Such treatment would impose special hardships on those TracFone customers who rely on their TracFone service as their primary telecommunications service.

As explained above, imposing a connection charge on prepaid CMRS connections would result in universal service charges being assessed on consumers who have little or no interstate usage in any month. Requiring carriers and ultimately their consumers to contribute to the federal universal service fund even when little or no interstate service has been used not only would be discriminatory but would also unfairly and unnecessarily harm low-income consumers by forcing upon them a disproportionate share of the burden of supporting universal service. It would be a strange and sad irony if those very customers who are intended to be beneficiaries of the universal service program not only were deprived of the benefit but were also required to pay a disproportionate amount of the support of the program. While the Commission may be correct that low-volume customers are not necessarily low-income customers,[15] there is no doubt that adoption of a monthly connection charge will particularly harm TracFone's many low-volume users (many of whom are low income) by regressively making them contribute more to the support of universal service than do other users.

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[15] *See Further Notice,* at para. 49.

TracFone is sensitive to the Commission's desire to address consumer concerns that some carriers have imposed on customers separate line item charges attributed to USF which are significantly above the current USF contribution rate. Unfortunately, the Commission's proposed solution to this problem would have a serious adverse impact on carriers like TracFone that do not – and indeed, cannot – recover USF contributions through a separate line item charge. Although the Commission, in establishing the current universal service contribution structure, recognized that carriers should have flexibility to decide how they should recover their USF contributions,[16] the Commission has designed its connection charge proposal without articulating any consideration of the proposal's impact on those carriers that do not have an option of adding USF line item charges on monthly bills.

This distinction between those carriers that would assess separate line item charges to recover universal service connection charges and those that would recover the costs of the connection charge in their service rates, would make it all the more difficult for consumers to meaningfully and accurately evaluate price differences among carriers. For example, a traditional CMRS carrier would be able to add a monthly connection fee to each subscriber's monthly bill without changing its usage rates and without having to promote the monthly connection fees in their advertising. In contrast, providers of prepaid wireless services, including TracFone, would find it necessary to raise their usage rates by increasing their charges for their prepaid wireless airtime cards. Consumers would assume that TracFone has raised its per-minute rates, while the traditional CMRS carrier will appear to have added only a regulatory fee mandated by the Com-

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[16] *Universal Service Order*, at para. 853.

mission, although that regulatory fee may be significantly inflated from the actual USF contribution rate established by the Commission. Although consumers currently face this situation, it will be exacerbated if the Commission were to increase the proportion of USF contributions to be recovered from CMRS carriers in general and providers of prepaid wireless services in particular.

Finally, a connection-based charge would harm consumers by providing uneconomic incentives for interstate telecommunications carriers to seek ways to avoid the statutory obligation to contribute to a universal service fund. One easy way to avoid universal service obligations would be to offer services that do not involve the provision of connections to the public switched network, *e.g.*, so-called "dial around" services. By providing incentives to offer such services with lengthy and confusing dialing patterns, the Commission would be turning back the clock on its efforts to promote equal access for long distance carriers with its associated consumer-friendly dialing patterns for long distance calls and promotion of competition among long distance carriers.[17] In addition, Congress recognized the importance of dialing parity to competition by enacting Section 251(b)(3) of the Communications Act.[18] Few, if any, events have done

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[17] *See, e.g., MTS and WATS Market Structure Phase III: Establishment of Physical Connections and Through Routes Among Carriers*, CC Docket No. 78-72 (Phase III), (*Report and Order*), 100 FCC 2d 860 (1985) (requiring independent telephone companies to implement equal access (where technically feasible), including preselection of an interexchange carrier and the dialing of no additional digits for the subscriber to reach the services of that carrier).

[18] 47 U.S.C. § 251(b)(3). *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98 (*Second Report and Order and Memorandum Opinion and Order*), 11 FCC Rcd 19,392, at para. 22 (1996), *vacated in part sub nom. California v. FCC*, 124 F.3d 934 (8th Cir. 1997), *rev'd AT&T Corp. v. Iowa Util. Bd.*, 119 S.Ct. 721 (1999) ("The section 251(b) dialing parity obligation will foster vigorous local exchange and long distance competition by ensuring that each customer has the freedom and

more to advance the development of competition and consumer choice in telecommunications than the advent of equal access following the divestiture of the Bell Operating Companies from AT&T in 1984. It is hard to imagine that nearly two decades following that historic sea change in the telecommunications landscape the Commission would promulgate universal service contribution rules which create economic incentives for carriers and consumers to avoid the convenience of 1+ dialing thereby returning consumers to an era of access codes and PIN number-based dialing.

IV. A CONNECTION CHARGE WOULD IMPEDE COMPETITION

When the Commission adopted the current universal service contribution structure, it established the principle of competitive neutrality, in addition to the statutory principles in Section 254(b) of the Communications Act, upon which to base its policies and rules regarding universal support mechanisms.[19] The Commission explained that competitive neutrality means that universal service support mechanisms and rules should neither unfairly advantage or disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.[20]

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flexibility to choose among different carriers for different services without the burden of dialing access codes.").

[19] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, (*Report and Order*), 12 FCC Rcd 8776, paras. 46-55 (1997) (*Universal Service Order*), as corrected by *Erratum,* FCC 97-157, released June 4, 1997, *aff'd in part, rev'd in part, remanded in part sub nom. Texas Office of Public Utility Counsel v. FCC,* 183 F.3d 393 (5th Cir. 1999), *cert. denied,* 530 U.S. 1210, *and cert. denied,* 530 U.S. 1223, *and cert. granted,* 530 U.S. 1213, *and cert. dismissed,* 531 U.S. 975 (2000). Section 254(b)(7) permits the Commission to include among the principles specifically enumerated in Section 254(b) "[s]uch other principles as the Joint Board and the Commission determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with this Act."

[20] *Universal Service Order*, at para. 47.

The *Further Notice* seeks comment on whether a connection-based assessment would be consistent with the guiding principle of competitive neutrality, which includes technological neutrality.[21]

A connection-based charge would not be consistent with the goal of competitive neutrality for a number of reasons. As explained above, a connection-based charge would favor those carriers who serve larger volume customers and would correspondingly disfavor those carriers whose services are beneficial to lower volume users. Under a connection-based USF contribution system, some carriers, such as larger interexchange carriers that cater to large volume customers, would have their USF costs, per-call or per-minute of revenue-producing service, reduced dramatically relative to the revenue derived from their services, while those competitors serving lower volume users would incur increased USF costs relative to revenues derived from those services. Such a result would impede rather than advance the goal of competitive neutrality.

With respect to technological neutrality, CMRS carriers would be competitively disadvantaged in their provision of long distance services to consumers when compared with current wireline interexchange carriers. Currently, interexchange carriers and CMRS carriers compete with each other in the provision of long distance services to consumers, even though the technologies used to provide the competing services are different. On the wireline side, consumers often purchase local services separate from long distance services and have different carriers

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[21] *Further Notice*, at para. 67.

providing each of these services.[22] For CMRS, these consumers generally purchase a bundled package of local and long distance services without the option of choosing a different presubscribed long distance carrier.[23] Each type of carrier is required to make USF contributions based on interstate revenues. Under the connection-based contribution system proposed in the *Further Notice*, CMRS carriers would be required to pay a monthly connection charge because they offer a variety of services, including access to the public switched network. Interexchange carriers, however, would rarely have to make any contribution to USF for their long distance services because they generally do not provide independent access to the public switched network. When consumers compare prices for long distance services of these two types of carriers, they will see an increase in their overall CMRS bills and a decrease in their monthly bills from interexchange carriers. Thus, CMRS carriers would be competitively disadvantaged by the connection-based charge and this disadvantage would stem in part from the nature of the technology used by CMRS carriers to provide service.

In addition, a connection-based USF contribution requirement would undermine competition because it would have an inequitable impact on those carriers who do not recover USF contributions through a separate line item on their invoices. As explained above, because of the

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[22] Most Bell Operating Company local service customers do not yet have the option to choose their local service provider as their interstate long distance carrier. At a minimum, all local exchange carriers are required to offer customers the option of presubscribing to separate carriers for the provision of interLATA toll calls and intraLATA toll calls. 47 C.F.R. § 51.209.

[23] CMRS carriers are not required to offer customers the option of presubscribing to separate carriers for long distance service because the Commission has not determined that CMRS providers are local exchange carriers. *See* 47 U.S.C. § 3(26). Also, Section 332(c)(8) of the Communications Act provides that a person engaged in the provision of CMRS shall not be required to provide equal access to common carriers for the provision of toll services.

differences between how prepaid and more traditional CMRS services are offered, consumers will not have the information needed to make an effective comparison of the two services. Consumers generally evaluate services based on per-minute rates. Imposition of the connection charge will give the appearance that TracFone and other providers of prepaid services have raised their per-minute rates while the rates of competing carriers will appear stable. The confusion over CMRS rates will harm not only consumers, but will also impede fair competition that relies on well-informed consumers.[24] Rather than being competitively neutral, the use of a connection charge will harm overall competition in the CMRS marketplace and discourage carriers from introducing innovative new marketing plans like prepaid services that meet the needs of consumers.

V. RETAINING THE CURRENT REVENUE-BASED USF CONTRIBUTIONS WOULD BE MORE CONSISTENT WITH THE REQUIREMENTS AND GOALS OF THE COMMUNICATIONS ACT

TracFone is sympathetic to concerns expressed in the *Further Notice* that the current USF contribution system is not perfect and may face increasing difficulties as various telecommunications markets grow and change. Rather than ordering a wholesale overhaul of the current USF contribution system at this time, the most equitable, nondiscriminatory, and competitively neutral approach would be the continuation of a revenue-based contribution system. The Commission has made recent adjustments to the USF contribution system, but has not allowed ade-

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[24] *See, e.g., Implementation of the Subscriber Carrier Selection Changes Provision of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers,* CC Docket No. 94-129, (*Second Report and Order and Further Notice of Proposed Rulemaking*), 14 FCC Rcd 1508, at para 145 (1998) ("Confusion over carriers and the services they provide can negate competition because confused consumers cannot make informed choices.").

quate time to evaluate whether these adjustments will address concerns that have been identified in the *Further Notice*. For example, less than a year prior to the *Further Notice*, the Commission modified the methodology used to assess USF contributions by reducing the interval between the accrual of revenues and the assessment of universal service contributions based on those revenues.[25] Indeed, while the *Further Notice* sought comment on a radical change for USF assessment methodology, the same document made additional modifications to the current revenue-based USF contribution assessment methodology. In addition, TracFone notes that the state of the market for telecommunications is difficult to assess because of recent economic and regulatory changes. TracFone urges the Commission to wait until recent marketplace and USF contribution changes can be reasonably evaluated before undertaking radical changes that may address the concerns of some carriers but may also have unintended adverse consequences for other carriers and for consumers. TracFone supports the continuation of a safe harbor percentage for determining interstate revenues of CMRS carriers.[26] The safe harbor is needed because CMRS carriers offer bundled interstate and intrastate services. Moreover, unlike wireline services, the jurisdictional character of CMRS services is often impossible to determine. Indeed, many CMRS communications change from interstate to intrastate communications during the calls themselves

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[25] *See Federal-State Joint Board on Universal Service, Petition for Reconsideration for Reconsideration Filed by AT&T*, CC Docket Not. 96-45, (*Report and Order and Order on Reconsideration*), 16 FCC Rcd 5748 (2001).

[26] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, (*Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*), 13 FCC Rcd 21,252 (1998) (adopting an interim safe harbor percentage of interstate revenues for cellular, broadband PCS, and digital SMR providers of 15 percent of total telecommunications revenues).

as the parties move from jurisdiction to jurisdiction. The 15 percent safe harbor policy has worked well and should be continued.

VI. CONCLUSION

For the reasons set forth above, the Commission should retain its current methodology of basing universal service fund contributions on a telecommunications carrier's interstate end-user revenues. TracFone opposes a radical shift to basing USF contributions on a connection fee. Such as shift is contrary to the requirements of the Act, and will harm both consumers and competition.

Respectfully submitted,

TRACFONE WIRELESS, INC.

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April 22, 2002

CERTIFICATE OF SERVICE

I, Michelle D. Diedrick, an Executive Assistant with the law firm of Greenberg Traurig, LLP, hereby certify that on April 22, 2002, a true and correct copy of the foregoing Comments of TracFone Wireless, Inc., was submitted to the following:

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Washington, D.C. 20554

The Honorable Kathleen Q. Abernathy
Commissioner
Federal Communications Commission
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Washington, D.C. 20554

The Honorable Michael J. Copps
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